

The PRESIDING OFFICER (Mr. VOINOVICH). Without objection, it is so ordered.

#### PRUDENT LAYPERSON STANDARD

Mr. BAUCUS. Mr. President, I return to the floor today to urge my colleagues to allow an open debate on the Patients' Bill of Rights. For some time now we have been asking for this debate. Actually, we have been asking for about 2 weeks. Yet we still have not reached an acceptable agreement.

I return to the floor today to continue my discussion of a critically important provision in the Patients' Bill of Rights. This provision ensures appropriate coverage for emergency services according to the prudent layperson standard. Unfortunately, the alternative standard that my colleagues on the other side of the aisle are offering falls short of the true prudent layperson standard. It is unfortunate that we are locked into a divisive debate, since I believe we could reach agreement on this provision.

We have already passed the prudent layperson standard for Medicare and Medicaid beneficiaries—a very important point. It is already in the law. Now we need to complete the task and offer the same protection for hard-working Americans with private insurance.

The bipartisan bill I cosponsored and the Democratic Bill of Rights contain the real prudent layperson standard for emergency services. What is the problem with the version of the prudent layperson standard proposed by those on the other side of the aisle? There are two weaknesses in their version.

First, it provides an inadequate scope of coverage for emergency services. The prudent layperson standard in their bill only applies to 48 million people. Both the bipartisan bill and the Democratic bill apply this support and protection to all 180 million Americans with private health insurance.

I heard arguments from the other side of the aisle that the Federal Government shouldn't get involved in private health insurance. The problem with that argument is simply this: We already are involved. Thankfully, we have made the decision that even if there is no other guarantee in our health care system, we will have guaranteed access to emergency services.

Health care that millions of Americans receive during emergencies is a safety net on which our system relies. Federal legislation already mandates this safety net. The prudent layperson standard in our bill—which, I might add, has bipartisan support—parallels the Federal mandate for emergency care.

If we fail to extend the prudent layperson coverage to all privately insured individuals, then we are choosing to continue an unfunded mandate.

The other major weakness in the prudent layperson provisions in the Republican bill is the lack of provisions

for post-stabilization services. Mr. President I want to point out what the debate about post-stabilization services is all about. It simply boils down to two questions:

(1) Is post-stabilization care going to be coordinated with the patient's health plan, or is it going to be uncoordinated and inefficient?

(2) Are decisions about post-stabilization care going to be made in a timely fashion, or are we going to allow delays in the decision-making process that compromise patient care and lead to overcrowding in our nation's emergency rooms?

When I have heard arguments about the post-stabilization services, I have heard opponents of these provisions characterize post-stabilization care as "optional."

Mr. President, we need to understand that no matter what Congress decides to do, post-stabilization care will be delivered in our nation's emergency rooms. The care delivered after stabilization is not optional. The choice Congress has is to decide whether the care will be coordinated or uncoordinated.

Kaiser-Permanente is a strong supporter of the post-stabilization provisions in our bill for a simple reason: They realize that coordinating care after a patient is stabilized not only leads to better patient care, it saves money.

Mr. President, I have a letter of support from Kaiser-Permanente which outlines their reasons for supporting our version of the prudent layperson standard. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

KAISER PERMANENTE,  
Washington, DC, June 24, 1999.

HON. MAX BAUCUS,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR BAUCUS, since 1996, Kaiser Permanente has supported the passage of federal legislation embracing the Prudent Lay Person concept, which requires insurance coverage of emergency services provided to people who reasonably expect they have a life or limb threatening emergency. In connection with this, we support a requirement that the emergency physician or provider communicate with the health plan at the point where the patient becomes stabilized. This will allow for coordination of post-stabilization care for the patient, including further tests and necessary follow-up care. These concepts are contained in several bills currently pending before Congress. I should note, however, that our favoring of this language should not imply endorsement in its entirety of any specific bill that deals with other issues.

As a result of the Balanced Budget Act of 1997 with its ensuing regulations applicable to Medicare + Choice and Medicaid enrollees and the Executive Order applying the President's Advisory Commission's Bill of Rights to all federal employees, approximately 30 million Americans are now the beneficiaries of a financial incentive to emergency departments to communicate with the patient's health plan after the patient is stabilized. This helps to ensure that the patient's care

is appropriate, coordinated and continuous. It is important that emergency departments have the same incentive to coordinate post-stabilization and follow up care for patients who are not federal employees or beneficiaries of Medicare or Medicaid. We have heard of minimal problems implementing this standard in those health plans participating in FEHBP and Medicare + Choice programs. Since a federal standard is in place and working, it is good policy to extend that standard to the general population.

For the past ten years, we have implemented on a voluntary basis a program that embraces these concepts of honoring payments for the care our members receive in non-participating hospital emergency departments up to the point of stabilization. Our Emergency Prospective Review Program has encouraged the treating physicians in such settings to contact our physicians at the earliest opportunity to discuss the need for further care. This has allowed us to make available elements of the patient's medical record pertinent to the problem at hand and to coordinate on-going care as well as the transfer of the patient back to his/her own medical team at one of our facilities. We have found this program to be considerate of the patients' needs, emphasizing both the urgency of treatment for the immediate problem as well as the continuity of high quality care.

This has been a cost-effective practice, affording the patient the highest quality of care in the most appropriate setting. By assuring immediate response to telephone inquiries from non-participating emergency facilities, we have been able to provide substantial assistance to the emergency doctor who otherwise is practicing in an isolated environment without access to the patient's medical record. Our own emergency physicians on the telephone have offered peer consultations provisionally approved coverage for urgently needed tests and treatment, arranged for the coordination of follow up care, and implemented critical care transport of patients back to our own facilities. Of over two thousand patients transported in this fashion, one third have been discharged to their homes. Without this coordination of care, these patients would have been hospitalized at needless expense.

In summary, this program has served the needs of our patients, the treating emergency physicians, and our own medical care teams, while providing substantial savings in both clinical expense and in administrative hassle over retrospective approval of payment for services provisionally approved through the telephone call. We are strongly in favor of the post-stabilization coordination provision as an essential element of the emergency access provision of the Patients Bill of Rights.

Sincerely,

DONALD W. PARSONS,  
Associate Executive Director,  
Health Policy Development.

Mr. BAUCUS. Mr. President, I need to point out that this letter doesn't endorse all of the provisions in the Patients' Bill of Rights. However, it strongly supports the post-stabilization provisions in our bill. I'll read a small portion of the letter:

In summary, this program has served the needs of our patients, the treating emergency physicians, and our own medical care teams, while providing substantial savings in both clinical expense and in administrative hassle over retrospective approval of payment for services provisionally approved through the telephone call. We are strongly in favor of the post-stabilization coordination provision as an essential element of the

emergency access provision of the Patients Bill of Rights.

Mr. President, I don't know how you can say it any more clearly than that. Our version of the prudent layperson standard for emergency services is the right one for several reasons:

(1) It's patient-centered; (2) It's comprehensive; (3) It promotes coordination of care with the patient's health plan; (4) It decreases overcrowding in our nation's emergency rooms by requiring timely decisions; (5) And last but not least, it saves money.

Frankly Mr. President, I am puzzled by the fact that my Republican colleagues oppose this language. I can't understand why they oppose extending protection for emergency services to all Americans with health insurance. Shouldn't we do the right thing, and approve the real prudent layperson standard?

I urge my Republican colleagues to allow us to have an open debate on the Patients' Bill of Rights. We need to have this debate. Americans want protections in their health plans. Americans want a system that balances the needs for access, quality, and cost-control for their health care.

I am confident that we will have this debate. The last thing any of us want to do is put up barriers for patients who need medical care during an emergency.

Mr. President, this legislation removes barriers and allows patients to get the care they need, providers to deliver care in a timely fashion, and health plans the opportunity to coordinate care efficiently. I am confident that when we have this debate, we will be able to come together and pass the real prudent layperson standard for emergency services.

Mr. President, I yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The Senator from North Dakota is recognized.

#### DEVILS LAKE

Mr. DORGAN. Madam President, I come to the floor today to speak about Devils Lake in North Dakota. Most people don't know about Devils Lake. It is one of only two lakes at the bottom of a closed basin in the entire country. One is the Great Salt Lake, the other is Devils Lake. Devils Lake has a basin about the size of the State of Massachusetts tucked inside the borders of North Dakota.

To set the stage, North Dakota is ten times the size of Massachusetts. Devils Lake has been subject to chronic emergency flooding now for many years. That flooding in Devils Lake over recent years has caused absolute chaos for the folks who live in that region of northeastern North Dakota.

This is a lake that has risen about 25 feet in 7 years. In the past 60 years, it has risen nearly 50 feet. If you were a family living in Minnewaukan, ND, it wasn't too long ago that you lived 7

miles away from a lake. But recently I was standing in Minnewaukan, and the lake is right up to the back yards of that community. In 7 short years, people who lived 7 miles away from the lake now find the lake flooding their property.

The cost of this flooding, in human terms, is massive. The lake continues to rise in a manner that is uncontrolled, and the question for the Corps of Engineers and the Federal Government is: What do we do to respond to the threatening rise of the lake that has occurred in recent years and threatens a fairly large city in North Dakota? It threatens to cut off one region of our state from emergency services and the normal commerce of daily life. It inundates roads, railways and utilities.

In response, over \$300 million has been spent in that region raising roads and relocating people and building dikes—doing all the things necessary to combat the flooding. This is a different kind of flood, unlike a river flood, where we see a picture on television of a swollen river moving very rapidly and causing chaos with houses floating down the river. The lake flooding here has come, and it has stayed, slowly destroying homes and businesses. It is causing major problems.

One of the plans with respect to this Devils Lake flooding has been to build an outlet. We are building dikes to protect cities and protect roads. We are raising roads, using roads as dikes. We are doing all of these things over recent years.

One of the pending proposals is to build an outlet to take a small amount of pressure off the lake. The challenge is that there is no problem-free place to put the water. You could put some of it in the Sheyenne River, which goes down to the Red River and up into Canada. An outlet to the Sheyenne River can provide relief but must be well-managed to avoid causing problems for others. We don't want to solve a problem by creating a problem for others. The question of building an outlet has been a very difficult and sensitive one.

By the same token, most everyone believes it is an emergency and we must use a comprehensive strategy to try to take some pressure off this lake, including upland storage in the upper part of the basin and building an outlet to take some pressure off the lake. However, all of the plans and work to build an outlet have been for naught at this point, because the Corps of Engineers is at odds with itself on the question of whether an outlet should be built.

I came to the Senate floor to put in the RECORD two things. One is a "Draft Summary Document for the Report to Congress on the Emergency Outlet from Devils Lake, North Dakota, to the Sheyenne River, North Dakota." This was prepared by the St. Paul District Office of the Army Corps of Engineers. I requested this be made available to me by the Department of the

Army's Corps of Engineers Division Office in Vicksburg, MS.

Incidentally, Vicksburg, MS, has jurisdiction over North Dakota. Now, Lord only knows how that can happen. Tell me how it makes sense for a general sitting down in Vicksburg, MS, to tell us about lake flooding in North Dakota. But that is the way it is and the way the Corps is organized.

The St. Paul district, which has spent a great deal of time on this issue, prepared this document. I want to read just a bit from the document. The St. Paul district says pointedly that we face emergency conditions. This is the Corps of Engineers, St. Paul office:

Clearly we face emergency situations and we need to proceed.

The St. Paul division further says:

Further study and analysis are not reasonable responses to what is truly an emergency situation. What is required is a proactive, multifaceted emergency flood damage reduction plan to protect not only Devils Lake but the region. The lake is within a single Probable Maximum Flood (PMF) event of overtopping the levees protecting the City of Devils Lake, and for the first time in recorded history, the lake is within single PMF event of spilling into the Sheyenne River . . . Any project that would prevent the natural overflow would be justified by economics and from a human health and safety perspective.

Accordingly, the St. Paul District recommends immediate action leading to the construction of an emergency outlet.

The Mississippi division, which has charge of the St. Paul division, is 1,500 miles away. The general at the Mississippi division and his staff have come up with a completely different perspective. They are farther away, spend far less time on this issue, and know much less about the issue. The Mississippi commander wrote a letter to the North Dakota congressional delegation questioning the summary recommendations of the St. Paul office, which has done all of the work on this issue and whose experts judged there to be an emergency—one that justifies an outlet.

The Vicksburg office in Mississippi says that is not the case at all. They say they don't need an outlet. They say, first of all, they are not certain there is an emergency at all. They say an outlet is not necessary or appropriate. "Of the outlet plans reviewed, none of the outlet plans show benefits exceeding costs."

Incidentally, this computation by the Division "experts" wouldn't meet third grade math standards. They arbitrarily establish costs and benefits, but then leave out some of the real and major benefits. These benefits include, for example, not having to increase roads in order to keep roads open in this basin. Tens and tens and tens of millions of dollars are required to do that. But maybe if you have an outlet you don't have to do that.

The Corps of Engineers Division Office says: That is not the problem or the complication because we have